



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the  
Application of the

INTERNATIONAL ASSOCIATION  
OF MACHINISTS AND  
AEROSPACE WORKERS, AFL-CIO

alleging a representation dispute  
pursuant to Section 2, Ninth, of  
the Railway Labor Act, as  
amended

involving employees of

UNITED AIR LINES AND  
CONTINENTAL AIRLINES

38 NMB No. 41

CASE NO. R-7285  
(File No. CR-7004)

FINDINGS UPON  
INVESTIGATION

April 20, 2011

This determination addresses the application filed by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM). The IAM requests the National Mediation Board (NMB or Board) investigate whether United Air Lines (United) and Continental Airlines (Continental) (collectively the Carriers) are operating as a single transportation system.

The investigation establishes that United and Continental constitute a single transportation system. The single transportation system also includes Continental Micronesia (CMI).

PROCEDURAL BACKGROUND

On October 1, 2010, United notified the Board that it “implemented an Agreement and Plan of Merger dated May 2, 2010, resulting in the merger of United Air Lines, Inc. and Continental.” On January 21, 2011, IAM filed an application alleging a representation dispute involving the craft or class of

Stock Clerks at the Carriers. The Board assigned Eileen M. Hennessey to investigate and requested that the Carriers provide information regarding their operations.

The Stock Clerks craft or class is represented by the IAM at United under the Board's certification in NMB Case No. R-4844. The CMI employees who perform stock clerk/stores functions are covered by CMI's Mechanics and Related Employees collective bargaining agreement with the International Brotherhood of Teamsters (IBT). The IAM filed an application to represent the presently unrepresented Stock and Stores Employees at Continental Airlines on October 8, 2010. On November 3, 2010, the Board authorized an election in NMB Case No. R-7262. On December 8, 2010 the Board cancelled this election, *Notice to Stock and Stores Employees of Continental Airlines Halting of Ongoing Election*, 38 NMB 58 (2010), and on January 25, 2011, the Board administratively closed R-7262 and incorporated the IAM's application in that case into the present case.

On February 8, 2011, the Carriers submitted the requested information and filed an initial position statement with the Board. On February 15, 2011, the IAM filed a response to the Carriers' submission.

### ISSUE

Are United, Continental and CMI operating as a single transportation system? If so, what are the representation consequences?

### CONTENTIONS

#### United and Continental

The Carriers state that United, Continental and CMI comprise a single transportation system for the craft or class of Stock Clerks. According to the Carriers, the objective of the October 1, 2010 corporate merger was the creation of a single airline operating under the United name, and the Carriers are rapidly pursuing that goal. The Carriers are now commonly owned, with a single, shareholder-elected Board of Directors. They have combined management at the officer level, including labor relations and personnel functions and will have common management within a combined organizational structure at all levels within the first quarter of 2011. Customer communications, advertising and other marketing efforts describe the "new United" as a combined company. These customer communications also emphasize that the Carriers will be integrating operations in stages over the next year and will combine into one airline after obtaining a single operating certificate from the FAA. The Carriers also state that they are "well along" in

the process of integrating policies and practices, routes and schedules, livery and uniforms and are on schedule to integrate many customer service functions at the airport level during the Spring of 2011. Accordingly, the Carriers stated that they now constitute a single transportation system within the meaning of the NMB's case law.

### IAM

The IAM states that United and Continental have merged and become a single transportation system for purposes of representation of the Stock Clerks under the Railway Labor Act<sup>1</sup> (RLA or Act). Although the IAM's application in this matter did not specifically mention CMI, the IAM supports the Carriers' position that CMI is a subsidiary of Continental and is also part of the single transportation system arising from the United/Continental merger.<sup>2</sup>

### FINDINGS OF LAW

Determination of the issues in this case is governed by the Act, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

#### I.

United and Continental are common carriers as defined in 45 U.S.C. § 181, First.

#### II.

The IAM is a labor organization and/or representative as defined in 45 USC § 151, Sixth, and § 152, Ninth.

#### III.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions, "the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for purposes of this chapter."

#### IV.

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<sup>1</sup> 45 U.S.C. § 151, *et seq.*

<sup>2</sup> Issues raised by the participants regarding the composition of the Stock Clerks craft or class will not be addressed in this determination. The composition of the craft or class will be addressed at a later date in accordance with Manual Section 19.6.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and to designate who may participate as eligible voters in the event an election is required. In determining the choice of the majority of employees, the Board is “authorized to take a secret ballot of the employees involved or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives . . . by the employees without interference, influence, or coercion exercised by the carrier.”

## STATEMENT OF FACTS

### Background

Prior to the merger, United was a wholly-owned subsidiary of UAL Corporation, headquartered in Chicago, Illinois, and operating approximately 3,400 flights a day on United and United Express. These flights originate from hubs in Los Angeles, San Francisco, Denver, Chicago, Washington, D.C., and Tokyo to more than 230 U.S. domestic and international destinations. At pre-merger United, there are approximately 665 Stock Clerks (Storekeeper or Lead Storekeeper) on active or leave status and another 120 Stock Clerks on voluntary furlough status. United and the IAM are parties to a collective bargaining agreement, known as the Ramp and Stores Agreement<sup>3</sup> (CBA) that became amendable on January 1, 2010.

Continental was a publically-held company headquartered in Houston, Texas, operating 2,200 daily departures, including regional flights operated on Continental’s behalf, throughout the Americas, Europe and Asia. Pre-merger Continental flights served approximately 117 domestic and 127 international destinations. At pre-merger Continental, there are approximately 233 Material Specialists. These employees are currently unrepresented. In addition according to the Carriers, there are other Continental employees, such as Utility Mechanics who perform the same work that is performed by United’s Storekeeper position and are covered by Continental’s Mechanics and Related Employees collective bargaining agreement with the IBT. The Carriers estimate that there are approximately 92 Continental Utility Mechanics but that estimate “is subject to change based on further investigation and guidance from the Board.”

CMI, a subsidiary of Continental, operates from a hub in the U.S. territory of Guam. CMI began service as Air Micronesia in 1968 and was renamed Continental Micronesia in 1993 after its acquisition by Continental.

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<sup>3</sup> The IAM also represents the United Fleet Service Employees pursuant to the NMB’s certification in NMB Case No. R-4761. *United Airlines, Inc.*, 6 NMB 536 (1978).

CMI is managed entirely by Continental; it utilizes Continental name, livery, and logo; and its flights are marketed through the Continental reservations office and website. Historically, CMI had its own operating certificate, but Continental sought to combine the Continental and CMI operating certificates as a prerequisite to seeking and obtaining a single operating certificate for United and Continental (including CMI). On December 22, 2010, the FAA issued a new operating certificate covering both Continental and CMI. There are approximately 17 employees who perform stock clerk functions. These employees are covered by CMI's Mechanics and Related Employees collective bargaining agreement with the IBT.

#### Common Corporate Ownership

On May 2, 2010, UAL and Continental entered into an Agreement and Plan of Merger (Merger Agreement). Under the Merger Agreement, UAL would acquire all of the outstanding stock of Continental. Following governmental and shareholder approvals, the Merger Agreement became effective on October 1, 2010. UAL has been renamed United Continental Holdings, Inc. (UCH), and United and Continental are currently wholly-owned subsidiaries of UCH. UCH has a single board of directors, elected by former UAL and Continental shareholders. Glenn Tilton, former Chief Executive Officer at UAL and United, now serves as non-executive chairman of the UCH Board of Directors. Jeffrey A. Smisek, former Chief Executive Officer of Continental, now serves as President and Chief Executive Officer of UCH, United, and Continental.

#### Common Management and Labor Relations

According to the declaration of P. Douglas McKeen, Senior Vice President-Labor Relations for United and Continental, on October 1, 2010, the Boards of UCH, United, and Continental approved the appointment of approximately 60 officers for the combined companies. These officers include 8 executive vice presidents, 15 senior vice presidents and 38 vice presidents who hold identical positions with both United and Continental. All of the managing director and director positions for the combined company were on schedule to be filled by the end of January 2011. The departments are expected to fill all additional management positions in the first quarter of 2011. In addition, the executive offices of the Carriers have also been combined and all senior executives are relocating to the existing United offices in Chicago.

United and Continental have appointed a single group of officers responsible for labor relations. Michael Bonds, formerly the chief labor and human resources officer for Continental, is now Executive Vice President-Human Resources and Labor Relations for both Carriers. McKeen was formerly Senior Vice President-Labor Relations at United and is now

responsible for labor relations at both Carriers. Daniel Casey, formerly Staff Vice President-Labor Relations for Continental, is now Vice President-Labor Relations for both Carriers.

#### Labor Protection Provisions and Interim Agreements

According to McKeen, all of the affected employees are entitled under the McCaskill-Bond legislation to the benefit of Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions formerly issued by the Civil Aeronautics Board. McKeen further states that most of the existing CBAs include a contractual obligation to the same effect.

At the time of the Merger Agreement, almost all of the CBAs at both Carriers had become amendable and both pre-merger United and pre-merger Continental were involved in Section 6 negotiations with the incumbent organizations. The Carriers offered to enter into joint collective bargaining negotiations with any union that wished to do so. Only the Air Line Pilots Association (ALPA), which represents pilots at both pre-merger United and pre-merger Continental, accepted the offer. In July of 2010, the Carriers entered into a Transition and Process Agreement with ALPA. Combined bargaining teams began full-time negotiations for a joint CBA in August of 2010. United, Continental, and ALPA jointly applied for mediation with the Board on December 17, 2010.

The other unions representing employees at the pre-merger carriers elected to continue Section 6 negotiations on a stand-alone basis. This includes the CBAs applicable to the United Ramp and Stores Employees and the CMI Mechanics and Related Employees. On January 4, 2011, IAM and Continental announced a tentative agreement on an interim Flight Attendant CBA. This tentative agreement was submitted to the membership for a ratification vote, and on March 1, 2011, IAM announced the ratification of the interim CBA.

#### Personnel Policies and Employee Benefits

The personnel functions of United and Continental have been combined under the leadership of Michael Bonds. R. Douglas Rose, who was formerly Vice President-Total Rewards at United, is now Vice President-Human Resources for the combined Carrier. He has responsibility for strategic planning of human resources, compensation, and benefits for all 80,000 employees. Donna Towle, who was formerly Director of Human Resources for Continental, is Vice President-Employee Relations and manages a large team of employee relations representatives for the Carriers.

On October 1, 2010, the combined Carriers issued uniform personnel policies in a number of areas. These included the “Working Together Guidelines” the primary personnel policy governing all employees. The guidelines include a policy known as the “Working Together Expectations,” which is a set of employee personnel guidelines that replaced the previous guidelines at United and Continental.

The combined Carriers have also issued a common Equal Employment Opportunity policy, a common dress code for non-uniformed employees, and travel policies that provided reciprocal benefits for employees of both Carriers. According to McKeen, the combined Carriers have adopted a new compensation structure for management employees, replacing the compensation structures at United and Continental.

Through March 2011, the combined Carriers plan to issue additional personnel policies, including a common perfect attendance reward policy, common incentive programs, common profit sharing program, common smoke-free workplace policy, common holiday schedules, common policy on office closings under adverse conditions, and a common vacation policy. In March 2011, the Carriers will implement a common policy on seniority and service credit and a common performance management statement. According to McKeen, the combined Carriers will continue to harmonize remaining personnel policies and procedures during 2011. The Carriers also plan to announce a common benefits package for all non-union employees of the company that will be implemented on January 1, 2012.

During 2011, the combined Carriers plan to harmonize all departments. According to McKeen, “[e]ach functional department within the combined company has developed plans for a new, combined organizational structure and the Carriers are in the process of developing migration plans that will guide the transition from the existing separate organizations to a single, combined organization over the next year.”

#### Common Employee Communications

On October 1, 2010, the Carriers implemented common employee communications. “Flying Together” is a common “landing page” or homepage for the existing intranet systems used by United and Continental. As soon as technologically feasible, the Carriers will completely integrate the two intranet systems. A daily newsletter to all employees of the combined carrier, “United Daily” has replaced United’s “NewsReal” and Continental’s “Daily News.”

### FAA Operating Certificate

McKeen states that in October 2010 the Carriers obtained approval from the FAA for its transition plan for moving to a single operating certificate. The Carriers expect that the FAA will issue the single operating certificate in the last quarter of 2011 or the first quarter of 2012. According to McKeen, as a predicate to seeking the single operating certificate, Continental determined that it would seek to combine the Continental and CMI operating certificates so that when the FAA issues the single operating certificate to the Carriers it will include CMI. On December 22, 2010, the FAA granted Continental's request for a single operating certificate to combine it and CMI.

### Routes and Schedules

For two years prior to the merger, United and Continental had maintained a code-sharing and alliance agreement under which a large number of flights were already operated under both airlines' codes. According to McKeen, United and Continental had highly complementary route structures. They have since implemented changes to align schedules in the twelve markets where they had overlapping flights and have placed both Carriers' codes on a number of additional flights. Where flights carry both codes, they can be purchased through either Carrier's website or reservations center. Regarding further integration of flight routes and schedules, McKeen reports the following:

Beginning in January 2011, the Carriers will begin further to integrate routes and schedules by redeploying certain aircraft (and associated crews) from existing United routes to existing Continental routes-and vice versa-in order to better match the size of the market and/or to meet seasonal traffic fluctuations. Additional redeployment, which includes both mainline and express aircraft, will occur in stages continuing through 2012.

### Marketing, Frequent Flyer Programs, Clubs, and Credit Cards

Immediately after the merger became effective, the Carriers began a marketing campaign through e-mail messages to members of both Carriers' frequent flier programs, through advertisements in national media outlets, through slogans and information on the Carriers' respective websites, through pre-flight videos and through articles in the Carriers' respective in-flight

magazines. This campaign included the slogan: “United and Continental One Airline. Your Network just got better.” The Carriers will deploy an advertising campaign under the United name during 2011.

In November 2010, extensive information about the merger and the Carriers’ operations was published in their respective in-flight magazines. Both magazines include a combined route map and airport diagrams for all major airports served by either pre-merger carrier. Beginning in February 2011, the Carriers will begin publishing a single in-flight magazine, called Hemispheres like the current United in-flight magazine. The new in-flight magazine includes consolidated network maps as well as joint content and will be distributed across both networks.

In October 2010, the Carriers also integrated frequent flyer and airport club benefits so that members at both Carriers receive benefits and club access while flying at either Carrier. The Carriers will not merge the United MileagePlus and Continental OnePass programs into a single program until the end of 2011 due to the time required to merge computer systems. In October of 2010, both Carriers did, however, begin counting flights on either Carrier toward elite status under both programs. Elite members of each program have reciprocal access to complimentary upgrades and preferred economy seating on United and Continental flights. The Carriers’ airport lounges, the Red Carpet Club and the Presidents’ Club, are both open to members of either club. On October 1, 2010, the Red Carpet Clubs also adopted the Presidents’ Club policy of offering free wireless internet access and complimentary alcoholic beverages.

#### Customer Service Policies and Fees

The Carriers plan to integrate airport customer service during the first half of 2011. In the Carriers’ two largest hubs, Chicago O’Hare Airport and Houston’s Bush Airport, both Carriers have relocated operations to the same terminal. The Carriers have consolidated operations at most other hubs and expect to complete hub consolidation for all but one hub in the first quarter of 2011. Subject to the limitations of current lease agreements and the approval of local airport authorities, the Carriers will seek to consolidate ticket counters and gates at other airports beginning in January 2011. The Carriers are also in the process of consolidating other airport real estate, such as offices, break rooms, and storage rooms.

### Reservations

On “Customer Day One,” a date to be determined in the spring of 2011, the Carriers will implement changes to the existing reservations systems that will permit both Carriers to handle airport check-in at kiosks for customers of either Carrier.

### Corporate Name, Livery, and Logos

In the Merger Agreement, the Carriers agreed that the combined Carrier would be known as United, but that it would adopt a livery and marketing identity consisting of the United name and the Continental colors and logo. The use of the new livery and logo will occur in stages over the next year.

Aircraft will be repainted with the new livery as they are taken out of service for regularly-scheduled maintenance. The first aircraft painted with the new livery, a Continental B-737, began operating before the formal closing of the Merger Agreement. More than 200 aircraft have been repainted in the new livery and additional aircraft with the new livery are entering service on a regular basis. Until the combined Carrier receives a single operating certificate, the newly repainted Continental aircraft must carry the statement “Operated by Continental Airlines.” Aircraft operated by the Carriers’ regional partners will be repainted in the new livery with the name United Express with repainting of those aircraft on a schedule similar to the mainline aircraft.

More widespread use of the new United marketing identity will occur on Customer Day One. United will implement airport signage with the United name and Continental logo at many airports on or about Customer Day One. The Continental name and logo will continue to be used to designate Continental’s separate airport operations until the Carriers can combine flight operations under a single operating certificate.

### Common Uniforms and Insignia

The Carriers have begun to adopt designs and select manufacturers for common uniforms for all uniformed employees. The Carriers do not expect to implement common uniforms for all of these employees until 2012. Until that time, the Carriers will issue common accessories, such as branding pins, to give the appearance of common uniforms.

## DISCUSSION

### I.

#### The Board's Authority

45 U.S.C. § 152, Ninth, authorizes the Board to investigate disputes arising among a carrier's employees over representation and to certify the duly authorized representative of such employees. The Board has exclusive jurisdiction over representation questions under the RLA. *General Comm. of Adjustment v. M.K.T. R.R.*, 320 U.S. 323 (1943); *Switchmen's Union of N. Am. v. Nat'l Mediation Brd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, "the NMB is empowered to . . . decide representation disputes arising out of corporate restructurings."

### II.

#### Single Transportation System

Section 19.4 of the Board's Representation Manual (Manual) provides that: "Any organization or individual may file an application, supported by evidence of representation or a showing of interest . . . seeking a determination whether a single system of transportation exists."

In *Trans World Airlines/Ozark Airlines*, the Board cited the following indicia of a single transportation system:

[W]hether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier's stock; if signs, logos and other publicly visible indicia have been changed to indicate only one carrier's existence; whether personnel with public contact were held out as employees of one carrier; and whether the process of repainting planes and other equipment, to eliminate indications of separate existence, has been progressed.

Other factors investigated by the Board seek to determine if the carriers have combined their operations from a managerial and labor relations perspective. Here, the Board investigates whether

labor relations and personnel functions are handled by one carrier; whether there are a common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes.

14 NMB 218, 236 (1987).

The Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions. *Delta Air Lines/Northwest Airlines*, 36 NMB 36 (2009); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005); *Huron and Eastern Ry. Co., Inc.*, 31 NMB 450 (2004); *Portland & Western R. R., Inc.*, 31 NMB 71 (2003).

Further, the Board has noted that a substantial degree of overlapping ownership, senior management, and boards of directors is critical to finding a single transportation system. *Precision Valley Aviation, Inc., d/b/a Precision Airlines and Valley Flying Serv., Inc., d/b/a Northeast Express Reg'l Airlines*, 20 NMB 619 (1993). In *Delta Air Lines/Northwest Airlines*, above, the Board found a single transportation system where the FAA had accepted the carriers' plan for transition to a single operating certificate; there was a single board of directors; the carriers and the union had reached an agreement on seniority integration; and management and human resources positions had been integrated.

The Board recently determined that United, Continental and CMI operate as a single transportation system for the craft or class of Flight Attendants. *United Airlines and Continental Airlines*, 38 NMB 124, (2011).

In the instant case, the Carriers are wholly-owned subsidiaries of UCH. UCH has a single board of directors and a common senior management group in place. There is a single group of officers responsible for labor relations at the Carriers. Personnel policies and practices are in the process of being integrated. The Carriers have obtained approval from the FAA for a transition plan for moving toward a single operating certificate.

The Carriers have been aligning schedules in the markets where there are overlapping flights. The Carriers have maintained a code-sharing and alliance agreement for years and have plans for further integration of flight routes and schedules through 2012. The Carriers have begun the process of merging their frequent flyer programs and members of both Carriers' programs are now able to receive benefits while flying at either Carrier. The Carriers have relocated operations to the same terminal in the two largest hubs. The Carriers have adopted a new logo and the first aircraft with the new livery has

begun operating. The Carriers have begun the process of transitioning to common uniforms.

The Board's criteria for substantial integration of operations do not require total integration of operations. *US Airways/American West Airlines*, 33 NMB 49 (2006). Although there is not yet a total integration of operations at United and Continental, those cases where the Board has failed to find a single transportation system for that reason are distinguishable. In *AirTran Airways*, 25 NMB 24 (1997), the Board found no single transportation system where the merger had not been consummated and there was insufficient evidence that crews would be integrated even after the merger was effected. In *GoJet Airlines*, 33 NMB 24 (2005), the Board found there was no single transportation system where the two carriers continued to operate under separate management, separate labor relations and terms and conditions of employment, and separate hiring and recruitment. The Board also noted that each carrier retained its own website with no links or information about the other.

In this case, however, plans are underway for further integration in every area where it has not yet occurred, such as reservations systems and customer service. Further, the Carriers have informed their customers of the merger through pre-flight announcements, both Carriers' websites, magazines, and other media outlets. There is little doubt that integration of operation will continue.

Based upon the application of the principles to the facts established by the investigation, the Board finds that United and Continental operate as a single transportation system for representation purposes.

The evidence also establishes that CMI is part of this single transportation system. The Board previously identified "Air Micronesia" as a subsidiary of Continental in its determination that Continental and Continental Express were a single transportation system. *Continental/Continental Express*, 20 NMB 326 (1993). Air Micronesia was identified as one of the debtor corporations that merged into Continental in the bankruptcy proceedings of Continental Airlines Holdings, Inc. *Id.* at 329. Air Micronesia was renamed Continental Micronesia in 1993 after being acquired by Continental. Subsequently, in two cases involving the Flight Attendant craft or class, the Board treated CMI as a separate carrier without specifically analyzing whether CMI was part of a single transportation system with Continental. See *Continental Airlines/Continental Micronesia*, 27 NMB 76 (1999); *Continental Micronesia*, 22 NMB 189 (1995). These cases, however, pre-date the recent combination of the CMI and Continental operating certificates.

CMI is managed entirely by Continental and its aircraft bear the Continental livery. Its ground operations use only the Continental name and

logo and its flights are marketed through the Continental reservations office and website. As a result of the merger between United and Continental, Continental decided to seek to combine the CMI and Continental operating certificates. On December 22, 2010, the FAA granted Continental's request and issued a new operating certificate covering both Continental and CMI.

Based on the factors discussed above for determining whether a single transportation system exists, the Board finds that United and Continental are a single transportation system for representation purposes in the Stock Clerks craft or class and that the single transportation system includes CMI.

### CONCLUSION

The Board finds that United and Continental (including CMI) are operating as a single transportation system for representation purposes under the RLA. Accordingly, the IAM's application in File No. CR-7004 is converted to NMB Case No. R-7285. Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of these crafts or classes. Any Intervenor has 14 days from the date of this determination to file an application supported by a showing of interest of at least 35% of the single transportation system in accordance with Manual Sections 19.601 and 19.603. The participants are reminded that under Manual Section 19.7, existing certifications remain in effect until the Board issues a new certification or dismissal.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel